

1814980 (Migration) [2019] AATA 5268 (4 September 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1814980

MEMBER: Helena Claringbold

DATE: 4 September 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa

STATEMENT MADE ON 04 SEPTEMBER 2019 AT 8:39AM

1.

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) — financial records provided – not genuine spousal partners – no joint liabilities – inconsistent information about financial aspects of relationship, household, addresses resided at, employment, salary and travel arrangements – credibility issues – fabricated claims – mental health issues – family illness – internal allegations – suspected contrived marriage – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5, 359AA, 375A

Migration Regulations 1994 (Cth), rr 1.09A, 1.15A(3, Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

2.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. On 29 June 2017 Mr [A], the applicant, applied for a Partner (Temporary) (Class UK) visa. The application was based on his spousal relationship with Mrs [A], the sponsor.

4. On 3 May 2018, a delegate of the Minister for Home Affairs refused to grant the visa. The delegate was not satisfied that the visa applicant and the sponsor are genuine spousal partners. The delegate found that, the visa applicant did not meet cl.820.211 and specifically cl.820.211(2)(a) of Schedule 2 to the Migration Regulations 1994 (the Regulations) made under the *Migration Act 1958* (the Act). On 22 May 2018, the applicant provided the Tribunal with a copy of the delegate's decision record. This is a review of the delegate's decision.
5. On 10 April 2019, the applicant called the Tribunal and requested that the hearing date be brought forward because his mother was ill and the sponsor was departing Australia on 10 June to see his mother.
6. On 30 April 2019, the Tribunal invited the applicant and the sponsor to a Tribunal hearing on 12 June 2019. On 4 June 2019, the applicant wrote to the Tribunal and stated that the sponsor 'had been in Vietnam to take care of my mother and will not be back by 10 June 2019 but she is happy to have conference with the Tribunal' (the Tribunal infers that the applicant meant 12 June 2019).
7. On 4 June 2019, the Tribunal wrote to the applicant and invited him to a Tribunal hearing on 8 July 2019. He was advised to arrange for Mrs [A] to attend the hearing.
8. On 8 July 2019, the applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence by telephone from the sponsor and also took oral evidence from a friend of the applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
9. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. The Tribunal has taken into consideration, individually and as a whole, all the evidence in the Department of Home Affairs (the Department's) case file and the Tribunal's case file and the evidence at the Tribunal hearing.

11. ISSUE

12. The issue in the present case is whether, the applicant is the spouse of the sponsor as defined in s.5F of the *Migration Act 1958* (the Act).

BACKGROUND ON THE EVIDENCE

13. The applicant was born in [Hai Duong], Vietnam. His parents and [siblings] live in Vietnam. [In] February 2014, the applicant entered Australia as the holder of a [temporary] visa. On 23 June 2015, the applicant's [temporary] visa was cancelled and he became an unlawful non-citizen. The applicant has declared no previous marriage or de facto relationship.
14. The sponsor was born [in] Vietnam. Her parents and brother live in Australia. In June 2006, she entered Australia as the holder of a [temporary] visa. [In] October 2007, she married Mr [B]. In November 2008, the sponsor was granted a temporary partner visa based on her partner relationship with Mr [B], which later became a permanent partner visa in January 2010. In May 2011, the sponsor was granted Australian citizenship. [In] August 2011, the sponsor and Mr [B] divorced. There are two children from this relationship born in [year] and [year]. The sponsor has a third child born in [year] by another partner.

15. In April 2015, the parties met at [a location] in [City 1], [Australian State]. The applicant claims that they lived in a partner relationship since May 2015. In June 2017, the parties married in [specified suburb], [Australian State].

Is the visa applicant the spouse of an eligible citizen?

16. The Tribunal is satisfied that the sponsor, at the time of visa application and at the time of this decision, was an Australian citizen.

Are the parties validly married?

17. At the time the visa application was made the visa applicant provided evidence of his marriage to the sponsor. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the parties in a spousal relationship?

18. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d).

19. CLAIMS AND FINDINGS

Are the other requirements for a spousal relationship met?

20. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision.
21. **Regarding the financial aspects of the parties' relationship**, in June 2017 the parties stated that they have a joint bank account and use it to pay daily expenses for food, clothing groceries and transportation. A bank transaction list dated [in] June 2017 to [later in] June 2017 has been provided. There are two cash deposits recorded: one for [amount 1] and another for [amount 2] and one debit for [specified company]. Other information includes, a letter addressed to the sponsor, this recorded the applicant and the sponsor's children as beneficiaries for the policy. The letter advised the sponsor that all claims would be deposited into her bank account. On the visa application form generated on 29 June 2017, the applicant stated that the sponsor received a government family benefit and he was working to help support the family. Various ad hoc receipts in joint names have been provided for wedding supplies and household items. No evidence has been provided about who actually paid for these items. The applicant provided a copy of his will of June 2017 nominating the sponsor as his sole beneficiary and a copy of the sponsor's will nominating the applicant as a 40 per cent beneficiary and her [children] each as 20 percent beneficiaries. The wills are witnessed by the applicant's (previous) representative. The applicant told the Tribunal the following: he supports the family financially and also supports his family in Vietnam. The parties have a debt [and] he provided a joint bank statement dated December 2018 detailing a loan in the parties' names. He said that he has started to pay back another debt of [a certain amount] which is a result of a car accident he had. The parties made a deposit [for] the purchase of a [home] to be completed in 2021. He provided a document titled Loan Approval and Your Acceptance Application for Finance – Letter of Offer dated [April] 2019 pages one and two. These record a maximum amount of credit [offered] to the applicant and the sponsor. Page 14 of the document records special conditions before the loan can

proceed including 'Evidence of Permanent Residency', 'FIRB approval to be provided prior to settlement' and Receipt of certificate from registered translator or bilingual solicitor for [Ms C] confirming they have read and understood the transaction documents'. In addition two utility accounts have been provided dated October 2018 to April 2019 with a handwritten note 'paid by our joint account'. The applicant also provided an invoice dated [December] 2018 to [January] 2019 addressed to him for kindergarten fees for the sponsor's [child]. The parties provided inconsistent information about the financial aspects of their relationship as detailed below.

22. The Tribunal put information to the applicant under s.359AA of the Act. The information is as follows:
 - The sponsor told the Tribunal the following: she was speaking to the Tribunal from Vietnam. She said that her return air ticket cost [sum 1] and she brought [sum 2] with her to Vietnam. This information was put to the applicant as it was inconsistent with his evidence that the sponsor's return air ticket cost [sum 3] and she brought [sum 4] with her to Vietnam.
 - The sponsor told the Tribunal the following: the parties' [Bank 1] joint bank account had a balance of [sum 4]. She previously had a personal bank account, which was also a joint bank account with [Bank 2] but the account is closed. She receives [sum 5] fortnightly in family benefit payments. The applicant does not have a personal bank account. The applicant's take-home pay in the week before the Tribunal hearing was [sum 6]. This information was put to the applicant as it was inconsistent with his evidence as follows: the parties' [Bank 2] joint bank account had a balance of [sum 7]. The sponsor has a [Bank 1] bank account where her government payment of [sum 8] fortnightly is deposited. He checked the bank balance on the morning of the Tribunal hearing and it was [sum 9]. The balance in his [Bank 1] bank account is [sum 10]. The applicant's take-home pay in the week before the Tribunal hearing was [sum 11].
23. The applicant responded in a post hearing submission and stated the following: the 'irrelevant' information was due to the sponsor caring for him. His mother is sick and he has been worried about all medical expenses for his mother. The sponsor was concerned that the applicant would be stressed if she told him the actual price of the air ticket.
24. The Tribunal may accept that the sponsor in caring for the applicant did not disclose the true nature of the cost of her air ticket or the amount of money she took to Vietnam. However while the parties provided spontaneous and exact evidence to the Tribunal, the parties lacked knowledge about the financial aspects of their relationship.
25. The Tribunal accepts the following: that in 2017 the parties had a joint bank account with limited transactions. In 2017 they were declared as cross beneficiaries on their wills. In 2017 they had legal obligation in respect of each other regarding their wills and with regard to their joint bank account and the joint loan as of December 2018. Utility bills were addressed to the parties' jointly. A document titled 'Application for Finance letter of Offer' is recorded as having a disclosure date of [April] 2019. As detailed in the letter under 'special conditions you must satisfy before the loan can proceed to settlement' is evidence of permanent residency and FIRB approval and receipt of a certificate from a registered translator or bilingual solicitor for [Ms C] confirming they have read and understood the transaction documents'. [Ms C] does not appear to be a party related either to the financial organisation or the parties, so it is perplexing why his/her name appears in this document. On another page under 'Things you must know' is recorded however, 'you may end the contract before you obtain any credit' etc. As the applicant is not a permanent resident and no evidence of FIRB approval has been provided to the Tribunal, it does not accept the credit offered to the parties for the purchase

of the property to be a joint liability or that the property is a joint financial asset. In January 2019, the applicant wrote to the Tribunal and stated that the parties lost a deposit for an apartment and are liable for the cancellation of the contract to an amount of up to [sum 12]. No further evidence was provided about this liability. There is no evidence about who paid the invoice for the kindergarten fees. The applicant has not provided any further joint bank statements (other than the statement for the bank loan) since 2017.

26. The Tribunal does not accept that the parties have any joint ownership of real estate or other major assets. While the Tribunal accepts that the parties have a loan in joint names, it does not accept that they have any other joint liabilities because it has not been provided any independent information to support that claim. Other than with the joint loan, the Tribunal does not accept that the parties pool their financial resources especially in relation to major financial commitments. The applicant has provided little independent information about how the parties share their day-to-day household expenses. Statements for their joint bank account date back to 2017. The parties provided inconsistent information about their bank accounts, about the applicant's salary and the sponsor's family benefit payment and about the rent they paid (detailed below). The Tribunal does not accept that the parties understand the financial aspects of their relationship and does not accept that they share day-to-day household expenses because there is little independent evidence to support this claim.
27. **Regarding the nature of the parties' household**, in written statements the parties claim to have lived together at [address 1], [address 2] and at [address 3]. In a letter dated June 2017, claiming to be from a Mr [D], it is stated that (prior to the parties' marriage) from [May] 2015 to [June] 2016 the parties' lived at [address 1]. No identification has been provided for Mr [A]. Various ad hoc documents are addressed to the parties at the [address 2]. A copy of a [driver's] licence has been provided for the sponsor which records this address with an expiry date of [2019]. On a copy of a driver's licence in the applicant's name a [address 4] is recorded with any expiry date of [2020].
28. In written statements dated June 2017 the parties stated that the sponsor cooked nice food for the applicant and is in charge of the cleaning and the laundry. However the applicant helped tidy the house and took care of heavy jobs including taking out the rubbish, mowing the lawn and repairing and moving furniture in the house and helped raise the sponsor's children. A friend of the applicant's told the Tribunal that the parties rented his house at the [address 4]. He said that the applicant looks after the sponsor's children and treats them as if he were their father. The parties provided inconsistent information about the nature of their household and this is discussed below.
- 29.
- 30.
31. The Tribunal put information to the applicant under s.359AA of the Act. The information is as follows:
 - The sponsor told the Tribunal the following: the week before the Tribunal hearing the applicant began work on Monday, Tuesday, Wednesday, and Friday at 6:30 am and finished work at either 5:00 pm or 5:30 pm and got home at either 5:00 pm or 5:30 pm. On the Thursday before the Tribunal hearing the applicant began work at 6:30 am and finished work at 3:00 pm and his take-home pay was [sum 12]. The applicant does not do any other work other than his [occupation 1] work. This information was put to the applicant as it was inconsistent with his evidence as follows: the week before the Tribunal hearing he worked on Monday, Tuesday and Wednesday. On the Monday he began work at 8:00 am and finished work at 5:00 pm or 5:30 pm and got home at 6:45 pm. On the Tuesday he began work at 8:00 am and finished work at

5:15 pm or 5:30 pm and got home at 6:40 pm and on the Wednesday he began work at 7:45 am and finished at 5:00 pm and got home at 5:30 pm. His take-home pay was [sum 11]. As well as working as a [occupation 1] he also works [in another job].

32. In a post hearing submission the applicant stated the following: 'the irrelevant information about my work schedule and income in the last week of working'. He had to call and ask for time off work because his mother is sick and he wanted to spend time with her and care for her. He didn't tell the sponsor that his (work) schedule changed and this is why she thought that he worked five days and earned [sum 10]. He didn't want to worry the sponsor about his overtime so he told the sponsor that he worked his normal hours from 8:00am to 5:00pm. He left home at 7:00am and came home around 6:50pm. His working hours are varied depending on the job and he does not have fixed hours of work. He has taken all kinds of jobs to support the family.
33. The Tribunal considered the applicant's response. It would expect that if the applicant's circumstances were as he stated in his response, that he would simply have told the Tribunal that these were his circumstances, because they simply reflected the truth. The Tribunal specifically asked the applicant about the days and hours that he worked the week prior to the Tribunal hearing. It was open to the applicant to tell the Tribunal that he didn't tell the sponsor of a change in schedule but he did not. The Tribunal is of the view that the applicant is fabricating his response to allay the inconsistent information provided by him and the sponsor. The Tribunal is concerned that the applicant's response is not reliable. In fact the sponsor told the Tribunal that the applicant worked longer hours than 8:00am to 5:00pm.
34. The Tribunal put information to the applicant under s.359AA of the Act. The information is as follows:

35. The sponsor told the Tribunal the following: she departed Australia [in] June 2019 to visit the applicant's mother because her condition worsened. She ran out of money and left Vietnam [in] June 2019 and entered Australia [later in] June 2019. She departed Australia again [in] July 2019 and was in Vietnam at the time the Tribunal spoke with her. The trip was an emergency to be with the applicant's mother whose condition worsened. This information was put to the applicant as it was inconsistent with the information he provided as follows: [in] June 2019, the applicant sent an email he sent to the Tribunal and stated that the sponsor was in Vietnam caring for his mother. He told the Tribunal that the email was sent 'just in case' the sponsor had to go to Vietnam. However, she didn't travel to Vietnam in June 2019. At that time his mother's health was not bad and he changed the departure date for the travel.

36.

37. The Tribunal put information to the applicant under s.359AA of the Act. The information is as follows:
- A Tribunal case note recorded that on 10 April 2019, the applicant called the Tribunal and requested that the hearing date be brought forward because his mother was ill and the sponsor was departing Australia [in] June 2019 to see his mother.
 - On 4 June 2019, the Tribunal wrote to the applicant and invited him to a Tribunal hearing on 8 July 2019. He was advised to arrange for Mrs [A] to attend the hearing.
 - On 4 June 2019, the applicant wrote to the Tribunal and stated that the sponsor was in Vietnam to take care of his mother in hospital and would not be back in Australia by [later in] June 2019.

- Departmental movement records for the sponsor record her as last entering Australia [in] May 2018 and not departing Australia since that date.
38. The applicant responded at the Tribunal hearing and stated that the sponsor departed Australia [in] July 2019 and did not depart (at all) in June 2019.
 39. In a post hearing submission the applicant stated the following: 'irrelevant information about travelling to Vietnam'. The sponsor travelled to Vietnam to visit the family. He thought the sponsor had travelled to Vietnam but because of a sudden problem arising she called him at the last minute to pick her up. The sponsor wanted to use her travelling budget to help her mother who had medical conditions and expenses. The sponsor only travelled to Vietnam in 2017 and 'other planned trips she never left the country'. She was paranoid about her mother being sick in Vietnam and talked with her every day and 'it became her habit in her mind that she was in Vietnam'. The sponsor is on medication which causes her to lose her memory. It was hard to understand the interpreter because she was asked questions in a South Vietnamese accent. However the sponsor was panicked in the Tribunal hearing and stated that there was nothing wrong with the interpreting but had to keep asking for questions to be repeated.
 40. The Tribunal considered the [medical professional's] opinion of 3 August 2019 including the following: the sponsor has [condition 1] and lack of concentration with memory impairment. She has suffered from a [condition 2] causing memory loss. She can't recall whether she has or has not been to a place and thinks she has been to places she definitely has never seen. The sponsor's [medication] was slowly reduced and ceased. She is now on antidepressants only. Over the last 11 months of treatment the sponsor has made progress. She no longer experiences [certain] symptoms.
 41. The Tribunal accepts the [medical professional's] opinion about the sponsor's health. It does not accept that the sponsor's psychological condition as a reason for the inconsistent information given by the applicant prior to, at and post the Tribunal hearing. The Tribunal's view is that the applicant is fabricating his evidence. In his email dated 4 June 2019, to the Tribunal, the applicant clearly stated that the sponsor was in Vietnam caring for the applicant's mother. On the response to the Tribunal hearing form dated 6 July 2019 and signed by the applicant he stated, 'my wife has been in Vietnam due to our mother urgency at hospital' and he goes on to provide a telephone number as 'my wife's contact'. The applicant and the sponsor provided different accounts of the sponsor's travel to Vietnam in June 2019, on one hand, the sponsor stating she travelled and was speaking with the Tribunal from Vietnam. On the other hand the applicant initially gave evidence that the sponsor had travelled to Vietnam in June 2019 and later recanting that evidence and stating that the sponsor had not travelled and only travelled to Vietnam in 2017. The Tribunal's view is that the applicant fabricated his evidence to the Tribunal. The Tribunal does not consider the applicant to be credible. The Tribunal is satisfied that the applicant and the sponsor understood the interpreting because they provided succinct and understandable and relevant responses to the questions put to them at the Tribunal hearing.
 42. The Tribunal does not accept that the parties share their living arrangements or live together. As a result the Tribunal does not accept that the parties have any joint responsibility for the care and support of the sponsor's children. It is of the view, even accepting the sponsor's psychological condition that if the parties lived together they would be able to provide consistent information about their arrangements and movements, particularly about where and when they lived together and about the applicant's work the week prior to the Tribunal hearing. The Tribunal is of the view that if the parties were sharing living arrangement the applicant would be able to provide consistent information about the details surrounding the sponsor's travel. Instead the parties provided different versions of when and where they lived, the days and hours the applicant worked and the applicant fabricated information

about the sponsor's travel to Vietnam. As a result the Tribunal does not accept that the parties live together, it does not accept that the parties have any joint responsibility for the care and support of children or that they share the responsibility for housework. The Tribunal has come to this conclusion after considering the [medical professional's] opinion and the information provided by the witness about the parties living at his property and the other information provided by the applicant. However, this collective information does not outweigh the inconsistent information provided by the parties about their household or allay the significant concerns the Tribunal holds about the applicant's' credibility.

43. **Regarding the social aspect of the parties' relationship**, in written statements dated June 2017 the parties stated that on week-ends they take the sponsor's children to restaurants, go shopping or swimming or played in the park. They stated that they attend all social functions together and are invited to birthday parties, weddings and family gatherings. The parties claim to celebrate birthdays and wedding anniversaries together and with others. The parties told the Tribunal that they have [a number of] children and their social life is restricted but they got to the park or go shopping. In statutory declarations by supporting witnesses dated June 2017: the sponsor's brother stated that he was introduced to the applicant two years prior. He attended the parties' wedding and sees them at least once a week. A friend of the applicant stated that he knew the applicant in Vietnam and reconnected with him in Australia. He attended the parties' wedding and meets the parties at least once a week. He believes the relationship to be the genuine and continuing. A friend of the applicant's told the Tribunal that he did not know if the parties relationship was genuine or not but when he met them at social functions the parties were affectionate toward each other. Photographic evidence depicts the parties together and with others at different locations. The Tribunal accepts that the parties represent themselves to other people as being married to each other. The Tribunal accepts that the parties plan and undertake joint social activities together. While the Tribunal accepts that the opinion of the witness at the Tribunal hearing is that he met with the parties and believed them to be affectionate towards each other and the opinions of the authors of third-party statements is that the parties' relationship is genuine, the Tribunal is of the view that these statements do not outweigh the inconsistent information the parties provided to the Tribunal. This inconsistent information led the Tribunal to have significant concerns about the parties' credibility and is discussed in this decision record.
44. **Regarding the parties' commitment to each other**, in written statements dated June 2017 the parties stated that they began living together as de facto partners [in] May 2015 and married [in] June 2017 (at their migration agent's office). He stated that the parties plan to purchase a house and have children together. On the visa application form generated on 29 June 2017, the applicant stated that he had been living with the sponsor for two years and that she needed his support to take care of her [children] and that she had [details deleted] if he didn't support them. The applicant in a written statement claimed that the parties have golden hearts and never walk away from each other and do crazy things together. The evidence about the sponsor caring for the applicant's mother is questionable because the applicant provided inconsistent evidence about her being in Vietnam and then gave evidence that she had not travelled since 2017. Additionally, Departmental movement records for the sponsor record that, at the time, the applicant and the sponsor claimed the sponsor was caring for his mother in Vietnam, she was in Australia.
45. The Tribunal put the core of the information the subject of the s.375A certificate to the applicant under s.359AA of the Act. The information is as follows:
- Information provided on the Department of Immigration and Border Protection file is that on 20 February 2018, the Department held an interview with a visa applicant in another visa application. In the other visa application, the visa applicant was sponsored by Mr [B], who is the declared ex-husband of the sponsor in this visa application. The visa applicant in the other visa application stated that Mr [B] was

living with his ex-wife and their children since mid-2016. The Tribunal notes that the sponsor in this application declared Mr [B] to be her only previous spouse and she did not declare any other partner relationships.

46. The applicant responded and stated that it is not true that the sponsor lived with her ex-husband because he lived in [City 2] and then lived with her at [address 4].
47. The parties provided inconsistent information about their living arrangements. The applicant provided inconsistent information about the sponsor's travelling to Vietnam and collectively this information led the Tribunal to find that the parties did not live together as they claimed. The Tribunal accepts that the parties married in June 2017.
48. When applicants provide consistent information about the different aspects of their relationship it provides insight into the degree of companionship and emotional support they draw from each other and into whether they see their relationship as long term. In this case the applicant and the sponsor provided inconsistent information about the financial aspects of their relationship and about their household, including when and where they lived, the applicant's working week prior to the Tribunal hearing, his salary and the sponsor's claimed travel arrangements. This led the Tribunal to not being satisfied that the parties' provide each other with companionship and emotional support or that they see their relationship as long term.

49. Other considerations

50. On 30 April 2019, the Tribunal wrote to the applicant and invited him to a Tribunal hearing on 12 June 2019. The applicant was advised of the following: In assessing his matter the Tribunal must consider either r.1.09A (de facto relationship) or r.1.15A (spouse relationship) of the Migration Regulations. Regulation 1.09A and Regulation 1.15A provide that the Tribunal considers all the circumstances of the parties' relationship including the financial aspects of the relationship; the nature of the household; the social aspects of the relationship and the nature of the parties' commitment to each other. The applicant was provided with a guide to the type of information that may be provided and told that it was not a definitive list.
51. The applicant was told that the Department issued a certificate pursuant to s.375 of the Act on 10 December 2018, against information on its file folio 90 and the reverse of folio 90. It stated that disclosure of the information contained in these folios would be contrary to the public interest because it would prejudice the security, defence or international relations of Australia or it would involve the disclosure of deliberations or decisions of the Cabinet or a committee of the Cabinet. The Tribunal is not satisfied that the certificate is valid.
52. The applicant was advised that on 5 July 2019, the Department issued a certificate pursuant to s.375A of the Act against information on its file folio 90 and the reverse of folio 90. It stated that the information contained in these folios would be contrary to the public interest because of Folio 90 Internal Allegations – Suspected contrived marriage [Mr A] ([details deleted]). Additionally, the folios disclose lawful methods for preventing, detecting and investigating breaches or evasions of the law, which would be likely to prejudice the effectiveness of those methods. He was told that the Tribunal is satisfied that the s.375A certificate is valid. The applicant was invited to comment on the validity of the certificate. The Tribunal put the core of the information the subject of the s.375A certificate to the applicant under s.359AA of the Act and this is recorded above.
53. The Tribunal provided the applicant until 22 July 2019, to provide a response to the matters put to him under s.359AA of the Act. The applicant requested and was granted an extension with the information to be with the Tribunal by close of business on 5 August 2019. On 8 August 2019, the applicant provided a response to the information put to him under s.359AA

of the Act and a report from a [medical professional]. In his submission the applicant directed the Tribunal to an attached statutory declaration from his uncle and a bank statement. This attachment was not received by the Tribunal. On 21 August 2019, the Tribunal invited the applicant to provide the statutory declaration and the bank statement. At the time of decision the applicant has not provided any further information.

54. In a post hearing submission the applicant provided a letter dated 3 August 2019 from a consultant [medical professional], who provided information including the following: that he is writing in support of the applicant's review of the partner visa application based on medical and humanitarian grounds. He assessed the sponsor for the first time [in] August 2018 and has been treating her since August 2018. In his opinion the sponsor suffered from a [a specific medical condition] with onset in 2018 following her father's accident. She suffered from various symptoms including a marked impairment in concentration associated with a tendency to be unable to recall recent events. However her condition was not diagnosed until sometime in late 2018 when she started on an antidepressant when she heard of her mother's brain injury. She was referred by her family doctor earlier this year for '[certain] symptoms early this year'. She has [certain symptoms] and lack of concentration with memory impairment. 'Her positive symptoms continue and she has [a specific symptom] [now]'. The [illness] has rendered her unable to perform full-time work or capacity to work under pressure. The sponsor has suffered from [condition 2] causing memory loss brought on by the stress of her mother's physical illness and financial hardship her psychological symptoms are she can't recall whether she has or has not been to a place and thinks she has been to places she definitely has never seen. It is anticipated that it will take a few more years to achieve reasonable recovery from this illness. As her [symptoms] resolved, her [medication] was slowly reduced and ceased. She is now on antidepressants only. Over the last 11 months of treatment the sponsor has made progress. She no longer experiences [certain] symptoms but her [other] symptoms remain troublesome.
55. The Tribunal accepts that the sponsor has the conditions as detailed in the [medical professional's] letter. However the Tribunal does not accept the sponsor's condition as a reason for the inconsistent information provided to the Tribunal. At the Tribunal hearing, the applicant was asked whether he and the sponsor were healthy and he responded in the affirmative. He did not provide any information relating to the sponsor's psychological health other than in 2017 when he stated that she had [details deleted]. He stated that he had seen a doctor to receive treatment and counselling for [medical condition 3]. At no time during the Tribunal hearing, did he or the sponsor raise any issue about the sponsor's health or her inability to give evidence to the Tribunal. The applicant and the sponsor provided succinct and understandable and relevant responses to the questions put to them at the Tribunal hearing. The [medical professional's] opinion as of 3 August 2019 is that the sponsor's [medication] was slowly reduced and ceased. She is now on antidepressants only. Over the last 11 months of treatment the sponsor has made progress. She no longer experiences [certain] symptoms. As detailed in this decision record not only did the sponsor state that she was speaking to the Tribunal from Vietnam but the applicant provided evidence that the sponsor was in Vietnam and gave contradictory evidence to the Tribunal about the sponsor's travel to Vietnam in 2019. Additionally, after giving inconsistent evidence at the Tribunal hearing that the sponsor had travelled to Vietnam in 2019, in his post hearing submission the applicant gave evidence that the sponsor only travelled to Vietnam in 2017 and other than that had not left Australia. This and other inconsistent evidence led the Tribunal to determine that the applicant is not credible.
56. This decision is a synopsis of the evidence before the Tribunal. The Tribunal considered all the evidence individually and as a whole including the Department and Tribunal case files and the evidence provided pre and post Tribunal hearing and at the Tribunal hearing. The parties provided inconsistent information about their financial matters and about their household. Overall, given the inconsistent evidence and credibility concerns, the Tribunal, is

not prepared to accept the parties' evidence about their commitment to the relationship. The parties have not satisfied the Tribunal that they have a mutual commitment to a shared life to the exclusion of all others, that they have a genuine and continuing relationship, or that they live together and not separately and apart on a permanent basis.

57. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
58. There is no evidence before the Tribunal that the applicant satisfies the requirements of any of the alternative subclauses.
59. As the Tribunal has determined that the applicant is not the spouse of the sponsor, it has not gone on to consider the Schedule 3 criteria.
60. Therefore the applicant does not meet cl.820.211(2)(a) or cl.820.221 of Schedule 2 to the Regulations.
61. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

62. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Helena Claringbold
Member

63.

64.

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).